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Director's Decisions for California

Exchanges

1957-1969

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In reply refer to:

Los Angeles 0100931
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

February 1, 1957.

Registered Mail
Return Receipt Requested

DECISION

State of California	:	State Exchanges

Appeal Dismissed

The State of California has appealed to the Director of the Bureau of Land Management from the decision of the Manager of the Land Office at Los Angeles, California, dated October 10, 1956, which rejected its application for the exchange of certain lands filed under Section 8 of the Taylor Grazing Act of June 28, 1934, as amended (43 U.S.C. 315g).

The last paragraph of the Manager's decision is as follows:

"This decision is subject to the right of appeal to the Director of the Bureau of Land Management. Should an appeal be filed, it must be received in the Land Office (215 West Seventh Street, Los Angeles), within 30 days from receipt hereof, accompanied by a $5.00 filing fee, and must set forth in clear and concise language the grounds of the appeal. Full compliance is required with 43 CFR Section 221.1 to 221.5 inclusive, and to the other pertinent sections of the Rules of Practice. See the information sheet attached.

Section 221.1 provides for an appeal by any party adversely affected by a decision of an officer of the Bureau of Land Management to the Director. Section 221.2 provides that a person who wishes to appeal to the Director must file in the office of the officer who made the decision a notice of appeal which must be received within 30 days after receipt of the adverse decision. Section 221.2 concludes as follows:

"... The notice of appeal may include a statement of the reasons for the appeal and any arguments the appellant wishes to make."

Section 221.3 of the Rules of Practice is as follows:

"Statement of reasons; written arguments; briefs. If the notice of appeal did not include a statement of the reasons for the appeal, such a statement must be filed in the office of the Director within 30 days after the notice of appeal is filed. Failure to file the statement of reasons within the time required will subject the appeal to summary dismissal as provided in section 221.98 ..."

Section 221.98 provides:

"Summary dismissal. An appeal to the Director...will be subject to summary dismissal by the officer to whom it is made for any of the following causes:

(a) If a statement of the reasons for the appeal is not included in the notice of appeal and is not filed within the time required; ..."

Appellant filed its notice of appeal on November 14, 1956. A statement of reasons should have been filed not later than December 14, 1956, the thirtieth day after the notice of appeal was filed. No such statement has been received and no request has been made for an extension of time in which to file the statement of reasons as provided for by Section 221.97 of the Rules of Practice. The appeal is therefore dismissed.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken, it must be received in this office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee. Strict compliance must be made with 43 CFR Sections 221.31 to 221.35, inclusive, and other pertinent sections of the Rules of Practice, Circular 1950, effective May 1, 1956 as amended by Circular 1962, effective October 4, 1956. See Information Sheet attached.

For the Director:

G. H. Turner

Attachment

DISTRIBUTION:
State of California, State Lands Division (Registered Mail)
Lands Staff Officer
Appeals List No. 1
CCS

In reply refer to:

Los Angeles 088528
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 20, 1957.

DECISION

Desert Sportsmen's Association, Inc. Carl G. Allen	)	Protestant Private Exchange

Appeal Dismissed
Case Remanded

The Desert Sportsmen's Association, Inc., filed an appeal on December 12, 1956, to the Director of the Bureau of Land Management from a decision of the Manager of the Land Office, Los Angeles, California, dated November 14, 1956, dismissing the Association's protest against a private exchange application, Los Angeles 088528, filed by Carl G. Allen under section 8 of the Act of June 28, 1934, as amended (43 U.S.C., 1952 ed., 315g).

In a letter dated January 9, 1957, addressed to the Director of the Bureau of Land Management the appellant withdrew its appeal from the Manager's decision. Consequently, the appeal is dismissed. Alvin James, A-27401 (November 13, 1956).

The case record is remanded to the Manager through the Assistant to the State Supervisor of this Bureau at Los Angeles, California, for further appropriate action on the exchange application.

For the Director:

A. H. Furr

DISTRIBUTION:
Desert Sportsmen's Association, Inc. (Regular Mail)
Mr. Carl G. Allen (Regular Mail)
Lands Staff Officer (1)
Appeals List No. 1
Ass't. to State Supervisor, with case record Los Angeles 088528
CLS

15435

Appealed to Sec
affirmed in Part & Remanded
A-27507 - 12-13-57

In reply refer to:

Los Angeles 0108931
087339
0116778, etc. 1/
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Registered Mail
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DECISION

April 15, 1957.

State of California	:	Selection Application
John E. and Pauline M. McNally	:	Private Exchange
Raymond H. Cain, et al. 1/	:	Small Tract Application
	:	

Decision of Manager Affirmed

By decision of April 18, 1956, the Manager of the Land Office, Los Angeles, California, rejected the amended State Indemnity Selection Application Los Angeles 0108931 filed by the State of California pursuant to the Act of February 28, 1891 (26 Stat. 796; 43 U.S.C. 851) as amended, and Sec. 7 of the Act of June 28, 1934 (48 Stat. 1269; 43 U.S.C. sec. 315f), as amended, for the NW¼NW¼ and the SW¼SW¼ sec. 32, T. 26 S., R. 33 E., M.D.M., California. The application was rejected as to the SW¼SW¼ for the reason that this land is included in a prior private exchange application, and as to the NW¼NW¼ for the reason that this land has been classified as suitable for small tract purposes and is covered by various small tract leases.

An appeal from the Manager's decision was received on May 22, 1956, and was signed by the State's applicant and the Supervising Land Title Abstractor, State Lands Division, State Lands Commission, State of California.

On December 29, 1953, the State filed a selection application embracing Lot 3 (NW¼NW¼) sec. 33, T. 25 S., R. 33 E., M.D.M., California, and the NW¼NW¼ sec. 32, T. 26 S., R. 33 E., M.D.M., California. The application was rejected as to Lot 3, sec. 33 by the Manager's decision of March 24, 1955, for the reason that all of sec. 33, with the exception of patented mining claims, was withdrawn on February 4, 1949, for the Isabella Reservoir and Dam Site. An appeal was filed from the partial rejection of the application, but by letter received July 19, 1955, the State withdrew the appeal and submitted an amended selection

---

1/ See Appendix "A" for list of small tract lessees.

application which again included the NW¼NW¼ sec. 32, T. 26 S., R. 33 E., and substituted the SW¼SW¼ sec. 32, T. 26 S., R. 33 E., for Lot 3, sec. 33, T. 25 S., R. 33 E.

The records disclose that between June 8, 1954 and April 11, 1956, thirteen small tract applications 2/ were filed pursuant to the Small Tract Act of June 1, 1938 (52 Stat. 609; 43 U.S.C. 682a) for various tracts of land located in the NW¼NW¼ sec. 32, T. 26 S., R. 33 E.; that this quarter-quarter section, together with other lands not material to this case, was classified for small tract purposes on February 24, 1955; and that small tract leases were issued to seven of the applicants on March 1, 1956, and to the remainder on May 1, 1956.

The records further disclose that the SW¼SW¼ sec. 32, is embraced in private exchange application Los Angeles 087339 filed February 11, 1941 by John E. and Pauline M. McNally pursuant to Section 8 of the Act of June 28, 1934. (48 Stat. 1269; 43 U.S.C. sec. 315g); that the land was classified for disposal under the private exchange application on May 25, 1943; and that the issuance of patent is pending the furnishing of acceptable policies of title insurance as to a part of the offered lands and a certificate of inspection and possession covering the offered lands.

The appeal filed May 22, 1956, was from both the partial rejection on March 24, 1955 of the original application and from the complete rejection on April 18, 1956 of the amended application. Since an appeal was previously filed from the partial rejection of March 24, 1955, and later withdrawn, and also since the period allowed for appealing that decision has expired, the present appeal cannot be accepted as an appeal from the rejection of the original application as to Lot 3, sec. 33. However, it may be noted that no irregularity has been shown in the Manager's decision with respect to this land. Lot 3, as was stated in the Manager's decision, was withdrawn by Public Land Order 548, dated January 26, 1949, which provides that all lands subject to the withdrawal "are hereby withdrawn from all forms of appropriation under the public-land laws." Until such time as the withdrawal is revoked the land is not subject to entry.

With regard to the NW¼NW¼ sec. 32, this land was duly classified for small tract purposes. In accordance with 43 CFR 257.3(b) such classification segregates the land from other forms of disposition. Pursuant to the classification small tract leases for thirteen tracts have been issued and constitute valid contracts binding on the United States, and no reason has been shown why the leases should be disturbed. cf. State of California, A-25855 (August 14, 1950).

Since the SW¼SW¼ sec. 32 is embraced in a prior valid private exchange application and the land was classified for disposal pursuant to that application many years prior to the filing of the State Indemnity Selection application, the States' application to the extent of its

---

2/ See Appendix "A"

conflict as to this tract must be rejected. Cf. State of California, 61 I.D. 334(1954); State of Nevada, A-27369 (November 7, 1956).

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken it must be received in this office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee. Strict compliance must be made with 43 CFR Sections 221.31 to 221.35, inclusive, and other pertinent sections of the Rules of Practice, Circular 1950, effective May 1, 1956, as amended by Circular 1962, effective October 4, 1956. See Information Sheet attached.

The adverse parties to be served in the event an appeal is taken from the rejection of the application as to the NW¼NW¼ sec. 32, are shown in Appendix "A" attached hereto. If an appeal is taken from the rejection of the application as to the SW¼SW¼ sec. 32, the adverse parties to be notified are: John E. and Pauline M. McNally, c/o West, Vizzard, Howden & Baker, 1315 Chester Avenue, Bakersfield, California.

Edward Woozley
Director

Attachments 2

DISTRIBUTION:

State of California (Registered Mail)
Mr. John E. McNally, Jr., and Mrs. Pauline M. McNally (Regular Mail)
All small tract applicants shown in Appendix "A"--(Regular Mail)
Lands Staff Officer (1)
Appeals List No. 1
Each case file
CLS

APPENDIX "A"

File No.	Name & Address	Date of Appn.	Date of Lease	Land Embraced in Lease
Los Angeles 0116778	Raymond H. Cain 414 Harvard Road Burbank, Calif.	June 8, 1954	March 1, 1956	NW¼SW¼NW¼NW¼
Los Angeles 0116779	Carl V. Nelson 807 Fairmount Rd. Burbank, Calif.	June 8, 1954	March 1, 1956	NW¼NW¼NW¼NW¼
Los Angeles 0117001	Don M. Bonnell 2716 Rosanna St. Los Angeles 39, Calif.	June 11, 1954	March 1, 1956	SW¼SW¼NW¼NW¼
Los Angeles 0117036	Patricia A. Corder- 2212 Havenbrook West Covina, Calif.	June 11, 1954	March 1, 1956	SW¼SE¼NW¼NW¼
Los Angeles 0117037	Thelma I. Corder 2032 E. Idahome West Covina, Calif.	June 11, 1954	March 1, 1956	NW¼SE¼NW¼NW¼
Los Angeles 0117038	Clair R. Day 221 No. Sunset Pl. Monrovia, Calif.	June 11, 1954	March 1, 1956	SE¼NE¼NW¼NW¼
Los Angeles 0117039	Heber H. Pitman 4448 No. Cedar El Monte, Calif.	June 11, 1954	March 1, 1956	NE¼NE¼NW¼NW¼
Los Angeles 0140009	William R. Maugnan 1879 Preston Ave. Los Angeles 26, Calif.	April 11, 1956	May 1, 1956	NE¼NW¼NW¼NW¼
Los Angeles 0140033	Bessie W. Snyder 1002 Watts Drive Bakersfield, Calif.	April 10, 1956	May 1, 1956	NW¼NE¼NW¼NW¼
Los Angeles 0140065	Malcom P. Reddick 638 Ranchito St. El Monte, Calif.	April 10, 1956	May 1, 1956	SE¼SW¼NW¼NW¼
Los Angeles 0140066	Ralph W. Benner 7730 Rindge Ave. Playa Del Ray Los Angeles, Calif.	April 11, 1956	May 1, 1956	SE¼NW¼NW¼NW¼
Los Angeles 0140075	Charles Silver c/o 15 Iowa Street Worcester 2, Mass.	April 11, 1956	May 1, 1956	SW¼NW¼NW¼NW¼
Los Angeles 0140088	George V. Envall, Jr. 605 Helen Street Whittier, Calif.	April 11, 1956	May 1, 1956	NE¼SE¼NW¼NW¼

Each tract is located in Sec. 32, T. 26 S., R. 33 E., M.D.M., California.

In reply refer to:

Los Angeles 0100931
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

July 15, 1957

Certified Mail
Return Receipt Requested

DECISION

State of California : Exchange

Manager's Decision Affirmed

By decision of February 1, 1957, the appeal of the State of California was dismissed for the reason that the State had failed to file a statement of reasons in support of its appeal as required by the Department's rules of practice. The State's brief in support of its appeal was timely filed on January 30, 1957, but through an oversight was not incorporated in the record. The decision of February 1, 1957, is hereby vacated.

The State's appeal which will be considered is from the decision of the Manager of the Land Office, Los Angeles, California, dated October 10, 1956, rejecting the State's application to exchange lands under subsection (c) of section 8 of the Taylor Grazing Act, as amended (43 U.S.C. 1952 ed. sec. 315g). The exchange proposed by the State is upon an equal area basis with the NW¼ and the NW¼SW¼ of unsurveyed sec. 16, T. 16 N., R. 1 E., S.B.M. offered as base lands in exchange for Lots 1 and 2, and the W½NE¼, N½SE¼ of sec. 8, T. 7 N., R. 24 E., S.B.M., California. The State's application was rejected for the reason that the lands selected are within a first form reclamation withdrawal and Power Site Project No. 30. In addition Lot 1 with portions of Lot 2 and the W½NE¼ sec. 8 are withdrawn for the Havasu Lake Wild Life Refuge.

As a condition precedent to the consummation of an exchange, the lands selected by the State must meet the test prescribed in subsection (c) of section 8 that they be surveyed grazing district lands not otherwise reserved or appropriated or unappropriated and unreserved

surveyed public lands. Where the lands selected do not meet this test the application for exchange must be rejected. Acting Solicitor's opinion 61 I.D. 277,279 (1954). A first form reclamation withdrawal is a bar to the approval of a State's exchange application. State of California, 60 I.D. 322 (1949). Accordingly it was proper to reject the State's application.

The Manager's decision is affirmed.

While this application as such must be rejected for the reason that the lands sought by the State are not subject to exchange, the State has requested that its brief in support of its appeal be considered in the alternative as a petition for restoration of the land. Accordingly when this decision becomes final the case is remanded to the Bureau's State Supervisor with instructions that the brief be considered as a petition for restoration of the land and acted upon accordingly.

The withdrawal created for Power Site Project No. 30 was vacated by an order of the Federal Power Commission issued April 10, 1947. With respect to the reclamation and wildlife withdrawals the State has indicated that through its negotiations with officials of the Bureau of Reclamation and Bureau of Sport Fisheries and Wildlife there may be a future modification of the withdrawals making it possible for an application by the State to be acted upon. Upon the modification or revocation of those withdrawals appropriate action could be taken upon a new application by the State.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken, it must be received in this office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee. Strict compliance must be made with 43 CFR Sections 221.31 to 221.35, inclusive, and other pertinent sections of the rules of practice, Circular 1950, effective May 1, 1956 as amended by Circular 1962, effective October 4, 1956. See Information Sheet attached.

For the Director:

A. H. Furr

Attachment

DISTRIBUTION:

State of California, State Lands Division (Certified Mail)
Lands Staff Officer
Appeals List No. 1
CCS

In reply refer to:

Los Angeles 0151939
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 7, 1958

Certified Mail
Return Receipt Requested

DECISION

Jack Schwartz	:	Private Exchange Application

Appeal Dismissed

Jack Schwartz, through his attorneys, has appealed to the Director, Bureau of Land Management, from a decision of the Manager of the Land Office, Los Angeles, California, dated October 21, 1957, rejecting his application for private exchange of lands under section 8 of the Taylor Grazing Act of June 28, 1934, as amended (43 U.S.C., 1952 ed., sec. 315g).

The Manager stated that his decision was subject to the right of appeal to the Director of the Bureau of Land Management and that in prosecuting an appeal full compliance was required with 43 CFR 221.1 to 221.5, inclusive, and with other pertinent sections of the rules of practice. The pertinent rules were set forth in an information sheet attached to the decision.

Section 221.1 provides for an appeal to the Director by any party adversely affected by a decision of an officer of the Bureau of Land Management. Section 221.2 provides that a person who wishes to appeal to the Director must file in the office of the officer who made the decision a notice of appeal which must be received within 30 days after receipt of the adverse decision. Section 221.2 concludes as follows:

> " *** The notice of appeal may include a statement of the reasons for the appeal and any arguments the appellant wishes to make."

Section 221.3 provides as follows:

"Statement of reasons; written arguments; briefs. If the notice of appeal did not include a statement of the reasons for the appeal, such a statement must be filed in the office of the Director within 30 days after the notice of appeal is filed. Failure to file the statement of reasons within the time required will subject the appeal to summary dismissal as provided in section 221.98.***"

Section 221.98 provides:

"Summary dismissal. An appeal to the Director*** will be subject to summary dismissal***for any of the following causes:

"(a) If a statement of the reasons for the appeal is not included in the notice of appeal and is not filed within the time required; *** "

Appellant, through his attorneys, filed the notice of appeal in the Land Office at Los Angeles, California, on November 21, 1957. No statement of reasons for the appeal was included in the notice. Thus the last day for filing the statement of reasons in the office of the Director, Bureau of Land Management, Washington 25, D. C., was December 23.1/ On December 19, 1957, the statement of reasons was received at the Land Office at Los Angeles. It was forwarded to the office of the Director and received there on December 26.

Within the meaning of 43 CFR 221.3, supra, a statement of reasons is not filed until it is received in the office of the Director. Because of the failure of the statement of reasons to arrive at the office of the Director within the time specified in the rules of practice, the appeal must be dismissed. James V. A. Carter, A-27487 (October 21, 1957); Charles J. Brady v. George M. Kitchen, A-27461 (June 26, 1957).

Edward Woozley
Director

Approved:

Secretary of the Interior

1/ The thirtieth day after the notice of appeal was filed fell on Saturday. 43 CFR, 1957 Supp., Sec. 221.96.

Distribution -- Page 3.

DISTRIBUTION:

Mr. Claude E. Young, Attorney for Appellant (Certified Mail)
Mr. Jack Schwartz (Regular Mail)
Mr. Stanley Broxmeyer (Regular Mail)
Lands Staff Officer
Appeals List No. 1
AIR

33950

DISTRIBUTION:

Mr. Claude E. Young, Attorney for Appellant (Certified Mail)
Mr. Jack Schwartz (Regular Mail)
Mr. Stanley Proseyer (Regular Mail)
[illegible] Lands Staff Officer
Appeals Unit No. 1
[illegible] AIR
[illegible]
[illegible]
[illegible]

In reply refer to:
Los Angeles 0106113
0106114
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

November 20, 1958

Certified Mail
Return Receipt Requested

DECISION

Jack H. Davidson : Private Exchange Applications

Decisions of Manager Affirmed

Jack H. Davidson has appealed from decisions of the Manager which rejected his private exchange applications for the reason that the selected lands have been withdrawn from entry by Public Land Order 548 of January 26, 1949, and that certain of the lands were withdrawn for power site purposes.

The appellant contends, in effect, that the lands have been restored from their withdrawn status and that his applications may now be allowed. The records here show that the selected lands were withdrawn and reserved for use in connection with construction of the Isabella Reservoir and Dam Site Project on the Kern River (California) under supervision of the Department of the Army, by Public Land Order 548 (14 F.R. 482). Portions of the selected lands are withdrawn for power purposes.

Although the Federal Power Commission made a favorable determination with respect to lands included in Mr. Davidson's petition for restoration, and the Corps of Engineers, Department of the Army, has agreed to the release of the lands from withdrawal, no order restoring the lands to disposition under the public land laws has been issued. In the circumstances, the lands are not subject to disposal. Keith Specking et al., A-26190 (July 24, 1951).

Since the applications were filed at a time when the lands were withdrawn the rejection of the applications was proper and the applications could not be held suspended to await the restoration of the land. Cf. W. C. Dalzell, A-26346 (March 28, 1952).

The Manager's decisions are affirmed.

Mr. Davidson is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

A. H. Trow

For the Director

Enclosure

DISTRIBUTION:

Mr. Kenneth H. Bates, Attorney for Appellant (Certified Mail)
Mr. Jack H. Davidson (Regular Mail)
Hon. Harlan Hagen, Member of Congress
Lands Staff Officer (1)
Appeals List No. 1
MAG

45092

I-1860 Ser noted pm

IN REPLY REFER TO:

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON 25, D. C.

5.05d-1D
Sacramento 032362

SEP 14 10 09 AM 1959

SEP 9 - 1959

DECISION

Crown-Zellerbach Corp.	:	Forest Exchange Act March 20,
Sierra National Forest	:	1922 (42 Stat. 465) as amended
	:	by the act of February 28, 1925
	:	(43 Stat. 1090)

The Decision of March 23, 1940, Accepting Title is Modified

Reference is had to our decision of March 23, 1940 accepting title to the NW¼, W½NE¼, NE¼NE¼ sec. 16, T. 9 S., R. 24 E., M. D. M., California, containing 280 acres, in exchange for timber from portions of sec. 21, T. 4 S., R. 19 E., sec. 3, T. 9 S., R. 25 E., M. D. M., California, within the Sierra National Forest.

The decision, among other things, alleged that the offered lands were subject to an easement of a right-of-way for an electric power line of the Pacific Gas & Electric Company in accordance with a decision of condemnation recorded June 2, 1917, in book 639, page 306, Fresno County, California.

The records of this office and the deed of reconveyance show that the owner of the easement or right-of-way is the Pacific Light & Power Corporation in accordance with a decision of condemnation recorded June 2, 1917, in book 639, page 306, Fresno County, California, in lieu of the Pacific Gas & Electric Company.

So much of the decision as relates to the Pacific Gas & Electric Company is modified to read the "Pacific Light & Power Corporation".

The records will be so noted.

For the Director:

S. C. Nichols

cy filed Dist Mgr 1959

DECISION

appeal to Sec Dec
affirmed A-28290
6-8-60

EXCHANGES * 1 Generally
* 2 Private Exchanges

It is not in the public interest to proceed with an exchange where the offered land is already utilized by another department of the Government under a claim of ownership pursuant to a declaration of taking.

Claude M. and Ethel M. Pease, Los Angeles 0152881 (October 14, 1959)

In reply refer to:

Los Angeles 0152881
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

October 14, 1959

Certified Mail
Return Receipt Requested

DECISION

Claude M. Pease Ethel M. Pease	:	Private Exchange Application

Decision Affirmed

Mr. and Mrs. Claude M. Pease have appealed from a decision rejecting their application to exchange land, filed pursuant to sec. 8 of the Taylor Grazing Act, as amended (43 U.S.C. 315 g), for the stated reason they are not legally capable of consummating the proposed exchange as they are not the owners of the offered land.

The records show that the appellant's exchange application offers 1280 acres consisting of sections 17 and 19, T. 8 S., R. 16 E., S.B.M., California for 1280 acres of public land. The records also contain a letter dated May 8, 1959 from the Director, Real Estate Division, District Public Works Office, Eleventh Naval District, San Diego, California, stating that the offered land, formerly owned by one Ben F. Griffith, is now owned by the United States, fee title thereto having been acquired on February 12, 1942 by the filing of a Declaration of Taking in Condemnation Proceedings entitled "U. S. vs. 112,613.67 Acres of Land, more or less, in Imperial and Riverside Counties, State of California; etc., et al., No. 2054-Y Civil". The letter further states that the offered land is encompassed in the northern portion of the Chocolate Mountain Gunnery Range, currently being used by the Navy for aerial gunnery training.

The appellants have submitted a statement purporting to show that they are the owners as joint tenants of the offered land, having assertedly acquired title thereto by purchasing a quitclaim deed from Ben F. Griffith on July 19, 1951, said deed being recorded in the records of Riverside County, California. The appellants contend in effect that the United States does not own the offered land because it failed to comply with the state statute regarding recordation of acquisition of interests in real property. The appellants assert in effect that they are innocent purchasers for value, relying upon the then "Torrens Title",

and that they have a good title to the offered land. They state they have a Policy of Title Insurance, insuring their title to the land in said sections 17 and 19 as joint tenants, and that they are legally capable of consummating the proposed exchange.

Under the law, a condition precedent to favorable consideration of any private exchange is that the exchange would benefit the public interest. Elisha C. Luna, A-26278 (March 21, 1952). It is not in the public interest for this Department to proceed with an exchange where the offered land is already being utilized by another department of the Government under a claim of ownership pursuant to a declaration of taking. Cf. Eilef Rue, A-26501 (February 6, 1953). See 40 U.S.C. 258 a; United States v. Sunset Cemetery Company 132 F. 2d 163, (1943); Silberman v. United States, 131 F 2d 715 (1942).

The decision below is affirmed.

Claude M. Pease and Ethel M. Pease are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

In the event of an appeal, the adverse party to be served is:

Director, Real Estate Division
Eleventh Naval District
San Diego 32, California

For the Director

Enclosure

DISTRIBUTION:
Mr. & Mrs. Claude M. Pease (Certified Mail)
Eleventh Naval District
Lands Staff Officer
Appeals List No. 1
RBO/FF

62479-59

EXCHANGES * 2. Private Exchanges

PUBLIC LANDS * 7 Withdrawals

Where the selected lands in an exchange application are withdrawn, the application must be rejected, notwithstanding that consummation of the exchange would assist in a Federal Land Program.

E. F. Berry, Edward D. Lewis, Los Angeles 0153232, 0154299 (October 22, 1959)

In reply refer to:

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Los Angeles 0153232
0154299
5.04g

October 22, 1959

Certified Mail
Return Receipt Requested

DECISION

E. F. Berry
Edward D. Lewis

Private Exchange Applications

Decisions Affirmed

Messrs. E. F. Berry and Edward D. Lewis have appealed from separate decisions of the Chief, Lands Adjudication Unit, rejecting their above-identified applications for the exchange of lands filed under Section 8 of the Taylor Grazing Act, as amended, (43 U.S.C., 315g,) for the reason the selected lands are withdrawn for public water reserves.

The records show that the land selected by Mr. Berry are withdrawn for Public Water Reserve No. 56, dated October 28, 1918, and the land selected by Mr. Lewis was withdrawn for a public water reserve by the Executive Order of January 24, 1914. Lands so withdrawn are not subject to disposition under the public land laws. Diamond Two Cattle Co., A-25210 (April 20, 1948).

The appellants contend in substance that the rejection of their applications is contrary to the law, and that there is a distinction between the filing of applications for the exchange of land and other application for withdrawn land, particularly where the proposed exchanges will aid in a Federal Land Program, and that under the regulations in effect in 1949, applications for exchange of lands which were withdrawn which is accompanied by a petition for restoration was not to be rejected but forwarded to the Director of the Bureau of Land Management for such action as may be deemed necessary. The appellants further contend that their offered land is located within the Joshua Tree National Monument under the jurisdiction of the United States National Park Service, and that it is in the public interest that the exchange of land be consummated in order that the private land within the National Monument may be acquired for better administration by the Government.

Section 8 of the Taylor Grazing Act, as amended, supra, under which the exchange of lands are authorized, provides in pertinent part:

> "(b) When the public interests will be benefited thereby the Secretary of the Interior is authorized to accept on behalf of the United States title to any privately owned lands within or without the boundaries of a grazing district

and in exchange thereof to issue patent for not to exceed an equal value of surveyed grazing district land or of unreserved surveyed public land in the same State or within a distance of not more than fifty miles within the adjoining State nearest the base lands." (Emphasis Supplied).

The selected lands are reserved public lands outside the boundaries of a grazing district in the instant cases.

The regulations relative to the filing of exchange applications, pursuant to the above cited act, have been amended, and those in effect at the present time and at the time the appellants filed their applications are contained in 43 CFR 1954, Sup. 146.1. The applications filed by the appellants are governed thereby. Under the present regulations there is no provision that applications for the exchange of land which involve withdrawn land will not be rejected but will be forwarded to the Director of the Bureau of Land Management along with a petition for the restoration of the land. Moreover, it has been consistently held by the Department that where public land is withdrawn from all forms of appropriation or disposal under the public land laws, an application therefore cannot be suspended to await restoration of the land but must be rejected. Alma Everett Morris, Jr., A-27235 (December 12, 1955); Charles Hover Stevens, A-27301 (May 4, 1956).

Moreover, in a letter of March 25, 1959, to C. M. Brewer (1035521) the Assistant Secretary of the Interior, in discussion a similar exchange application offering lands in Joshua Tree National Monument, stated that in view of the withdrawn status of the selected land, rejection of the application was required.

Under the Act of August 27, 1958, (72 Stat. 928; 43 U.S.C. 852), upon the revocation of any order of withdrawal, the State has a preference right of indemnity selection application for a period of 6 months. This preference right does not obtain if the revocation is made in furtherance of a Federal Land Program. In order to justify taking such action, we must have before us an acceptable proposal which would have a reasonable chance of consummation should the withdrawal be revoked. The appellants may in this connection submit to the Bureau's Assistant to the State Supervisor at Los Angeles, evidence that the selected lands do not exceed the offered lands in value, and a showing that it will be in the public interest for the Government to convey the selected lands to the exchange proponents and to accept title to the offered lands. The evidence and showing submitted should be sufficient to justify the expenditure of public funds to make the detailed examination necessary for the Government to determine whether revocation of the withdrawals to permit exchanges would be in the public interest.

Accordingly, the applications were properly rejected in the instant cases, and the decisions appealed from are affirmed.

Messrs. E. F. Berry and Edward D. Lewis are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director

Enclosure

DISTRIBUTION:

Mr. A. W. Brunton, Attorney for both Appellants (Certified Mail)
Mr. E. F. Berry (Regular Mail)
Mr. Edward D. Lewis (Regular Mail)
National Park Service
Lands Staff Officer
Appeals List No. 1
RBO

62479-59

DOCKET FILES

COLOR OF TITLE * 1 Generally

After compliance with applicable regulations, a person who has filed an allowable class 2 color of title claim, may, after the price has been established by the Manager, examine the appraisal report upon which the price is predicated.

William H. Johnson, Sacramento 052126 (April 11, 1960)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
Sacramento 052126
5.04g

April 11, 1960

DECISION

William H. Johnson : Color of Title

Case Remanded

On November 22, 1957, the Acting Manager of the Sacramento Land Office approved Mr. William H. Johnson's application to purchase a 40-acre tract of land under the Color of Title Act (43 U.S.C., 1952 ed., Supp. V, sec. 1068). Although the land had not been improved or reduced to cultivation, the applicant showed that he and his grantors had held the land in good faith and in peaceful adverse possession, and had paid taxes levied on it since before January 1, 1901. The application was thus allowable as a claim of class 2 (43 CFR 140.3).

In his decision allowing the applications, the Acting Manager fixed the price at which this land was to be sold at $18,095.00, that is, $500.00 per acre for the forty acres, less $1,905.00 which represents the amount paid for the land by the applicant when he "purchased" it from his grantor, as well as the money spent to fence in the land. Mr. Johnson received his copy of the decision on November 26, 1957.

On December 24, 1957, the applicant requested a copy of the field examiner's report on which the sale price was based. This request was denied on December 26, 1957; on the same day, the applicant filed a notice of appeal from the Acting Manager's decision as to the price of the land. The evaluation of the land at $500.00 per acre was alleged to be unrealistic, without foundation in fact, unreasonable, arbitrary, unfair, and beyond the power of the Bureau of Land Management to make.

On January 20, 1958, the applicant submitted a statement of reasons, repeating the allegations set forth in the notice of appeal, and contending further that the refusal to permit the applicant to inspect the appraisal report was erroneous.

The appraisal report has been reviewed, and it is concluded that in view of all factors present in the case, the case should be, and hereby is, remanded to the Manager for further appropriate consideration and reappraisal. The new report on which the new sale price shall be based will,

upon proper application, be made available to Mr. Johnson, in the light of the circumstances of this case.

Edward Woozley
Director

DISTRIBUTION:

Mr. William H. Johnson (Regular Mail)
Mr. John E. Malone, Attorney (Regular Mail)
Mr. Charles L. Gilmore, Attorney (Regular Mail)
Lands Staff Officer
Appeals List No. 1
MG

DOCKET FILES

EXCHANGES * 1 Generally

PUBLIC LANDS * 7 Withdrawals (Petitions for Restoration to Entry)

A private exchange application for withdrawn lands must be rejected.

Petitions for the restoration to entry of withdrawn lands may not be acted upon in the Land Offices, but must be submitted to the Secretary of the Interior for appropriate action.

Temescal Water Company, Los Angeles 0157316, 0159871 (April 15, 1960)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
Los Angeles 0157316
0159871
5.04g

April 15, 1960

Certified Mail
Return Receipt Requested

DECISION

Temescal Water Company : Private Exchange

Decision Affirmed in Part, Vacated in Part

The Temescal Water Company has appealed from a decision of the Acting Manager, dated November 24, 1959, rejecting its private exchange application on the ground that the lands applied for are withdrawn, and denying a petition for the restoration to entry of the same lands, on the ground that they should be retained for reservoir purposes.

The Company does not deny that the lands are withdrawn, but contends that the exchange application, instead of being rejected, should have been suspended, pending the restoration to entry of the land. The appellant states that this is a practice occasionally followed in the Land Office.

If the Land Office in the past has, in fact, suspended such applications, it acted erroneously:* it is well settled that applications to obtain lands withdrawn from disposition under the public land laws may not be suspended, but must be rejected. Eldon L. Cleveland, Nevada 017471 (December 26, 1957); Roy Leonard Wilbur, 61 I.D. 157 (1953). The rejection of the exchange application, therefore, was correct, and is affirmed.

The Director of the Bureau of Land Management, and consequently any official subordinate to him, does not have the authority to consider and reject petitions for the restoration to entry of withdrawn lands. Although the Secretary of the Interior had at one time delegated such authority to the Director (Order 2583, 15 F.R. 5643, August 23, 1950), the delegation was subsequently revoked (Amendment 19, Order 2583, 23 F.R. 10570, December 31, 1958). The applicant's petition instead of being rejected should have been transmitted to the Director, for study and further transmission to the Secretary of the Interior, who alone has the authority to act upon it.

Accordingly, the decision of the Acting Manager, insofar as it purports to reject the petition for the restoration to entry of the lands involved, is vacated. When this decision becomes final, the petition will be referred to the Office of the Secretary, for appropriate action.

---

* Except if the applications were filed pursuant to the regulations in 43 CFR, Part 145, which were revoked August 16, 1951.

The Temescal Water Company is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. These regulations are reprinted on Form 4-1365, a copy of which is enclosed. If an appeal is taken and involves both the application and the petition, the amount of the filing fee will be $10.00. In taking an appeal there must be strict compliance with the regulations.

Edward Woozley
Director

Enclosure

DISTRIBUTION:

Temescal Water Company (Certified Mail)
Lands Staff Officer (1)
Appeals List No. 1
MG

71918-60

DOCKET FILES

6.05c
Sacramento 060206

DEPT. OF INTERIOR
SACRAMENTO, CAL.

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

December 8, 1961

DEC 18 10 00 AM 1961

DECISION

Chris H. Gansberg, Executor : Private Exchange Application
Fred D. Gansberg Estate :

BUREAU OF
LAND MANAGEMENT
LAND OFFICE

Decision Vacated
Case Remanded

The above-named party has appealed from a decision dated August 31, 1960, rejecting his above-identified private exchange application in accordance with the standards established by the Secretary of the Interior on February 5 and 23, 1960, respectively, in that there is a marked dissimilarity in location or character of the offered and selected lands, which works against the equating of values.

On February 14, 1961, the Department promulgated a land conservation program superseding the previous pronouncements mentioned above.

Moreover, the record shows that the offered lands are located within the Mono National Forest in California. The appellant indicates in hisaappeal that the United States Forest Service, Department of Agriculture, is interested in securing jurisdiction over the offered lands for national forest purposes.

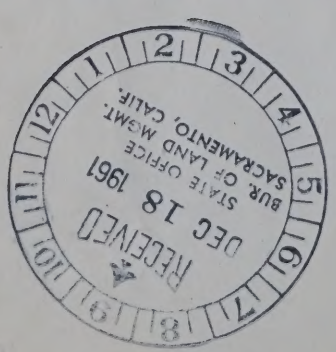
In view of the above facts, it should be determined, under the present land conservation policies of the Department, if the proposed exchange should be consummated, taking into consideration the question of whether or not it would be in the best public interest to acquire the offered lands, or to retain the selected lands in Federal ownership to be disposed of under other public land laws.

Accordingly, the decision appealed from is hereby vacated, and the case remanded to the Sacramento Land Office through the State Director at Sacramento for appropriate action consistent herewith.

Richard J. McCormick
Legal Assistant
Division of Appeals

DISTRIBUTION:

Appeals Reading File
Mr. Chris H. Gansberg, Executor of the Estate of Fred D. Gansberg (Regular Mail)
SD (Sacrmento); LO (Sacramento); Perm. File, Case File; Attorneys' Reading File;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DEC 18 1961
STATE OFFICE
BUR. OF LAND MGMT.
SACRAMENTO, CALIF.

appeal to Sec
affirmed 1-30-64
A-29830

DEPT. OF INTERIOR
SACRAMENTO, CAL.

OCT 15 10 00 AM 1962

BUREAU OF
LAND MANAGEMENT
LAND OFFICE

In reply refer to:
6.05c
Sacramento 060206
October 5, 1962

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Certified Mail
Return Receipt Requested

DECISION

Chris H. Gansberg, Executor : Private Exchange Application
:
Fred Gansberg Estate :
:

DOCKET FILES

Decision Affirmed

The above-named party has appealed from the decision dated February 26, 1962 which rejected his private exchange application because the selected lands were valuable for recreation, summer homesites, small tract business sites and for the management of timber.

A careful review of the record shows that the offered lands consist of the W½ Lot 4, E½ Lot 5, W½ Lot 6, E½ Lot 9, E½ Lot 10, and E½ Lot 11 of sec. 1, E½E½ Sec. 12; NE¼SE¼ Sec. 18; T. 10 N., R. 19 E., M.D.B.&M. and contain approximately 440 acres 1/. The selected lands include the NE¼SW¼ Sec. 6; NE¼, NW¼SE¼, NE¼SW¼ Sec. 7, S½S½, NW¼SE¼, SE¼NW¼ Sec. 8 ; T. 10 N., R. 20 E., M.D.B. & M, and contain approximately 520 acres 2/. All of the offered lands are situated within the Toiyabe National Forest, under the jurisdiction of the United States Forest Service, Department of Agriculture.

On appeal, the appellant contends, in essence, that:

1. The Land Office overlooked a letter from the Forest Service that they desire the offered land and request that the exchange be made.

2. The acreage computation by the Land Office was in error since there is a difference in only 40 acres between the selected and offered lands instead of 160 acres as shown in the decision.

1/ The decision appealed from incorrectly stated that the offered lands totaled 360 acres.

2/ The appellant contends in his appeal that there were only 12 forty acre tracts selected, however, we find that 13 were actually selected for a total of 520 acres, a difference of 80 acres between the offered and selected lands.

3. Sections 6 and 7 of the selected lands are "landlocked" by the appellant's deeded lands and no access is available to the public except by trespass.

4. The decision appealed from discriminates against the appellant in that he is unable to consolidate his private holdings and dispose of isolated tracts within the boundaries of the National Forest.

5. Two independent competent appraisers established the value of the offered lands at $12,692 and the value of the selected lands at $5,961.25, a clear advantage to the government in value of $6,730.

6. All waters flowing through the selected lands have been appropriated for many years so there is no water available for any type of intensive development.

7. The Alpine County Board of Supervisors has requested the Bureau of Land Management to notify them of any proposed small tract, or homesite developments and to hold hearings on any such proposals when they so requested.

It is true that the Forest Service has indicated its desire that offered lands be acquired and added to the Toiyabe National Forest. There are, however, certain factors concerning the selected lands and the community in which they are located which must also be weighed and considered in arriving at a determination as to whether this particular exchange, taken as a whole, would be in the public interest.

Factors to be considered are the effect on the economy of the area, the amount of land available to private individuals (the selected land is located within 35 miles of Lake Tahoe, a nationally known recreation area), roads to the land (a part of the selected land is located on a hard surface road), and the suitability of the selected land for other types of disposal. It appears that the major portion of the selected land is ideally located for subdivision into summer homesites, business sites and for recreational uses. The Department held in a similar case that

> "There is little doubt that acquisition of the base land by the United States would promote better administration of the National Forest within which it is situated, and the Forest Service has rightly reported this conclusion as its opinion. 'Both this factor is only one of many which must be considered by the

Land Office and the Department in determining whether the exchange as a whole will promote the public interests of the United States. The mere fact that one or two elements of desirability are to be found in the proposed transaction does not relieve the Department of its duty to look further in order to determine whether, when all factors are weighed together, the balance favors the public interest of the United States. It cannot be said therefore that the Land Office acted improperly in failing to be bound by the single factor of the representation of the Forest Service." David B. Morgan, A-24365 (July 23, 1946).

Therefore it does not appear that the proposed exchange, when all factors are considered would be in the public interest.

In view of the foregoing it is unnecessary to consider the remainder of the appellant's arguments. Accordingly, the decision appealed from is affirmed.

Fred Gansberg is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations.

Dale E. Zimmerman
Chief, Division of Appeals

Enclosure

DISTRIBUTION:
George W. Abbott, Attorney for Appellant (Certified Mail)
Mr. Chris H. Gansberg, Executor, Fred Gansberg Estate (Regular Mail)
SD (California)
LO (Sacramento)
Division of Lands & Recreation
Case File
Form. File
Appeals Reading File
Attorneys' Reading File
CLH

appeal to Sec
dismissed
A 29533 6-10-65

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
6.05c
Sacramento 051653

March 15, 1962

Certified Mail
Return Receipt Requested

DECISION

State of California : State Exchange Application

Decision Affirmed as Modified

The State of California has appealed from a decision dated May 16, 1961, rejecting its application for an exchange of lands because the value of the selected lands exceeds the value of the offered lands and the selected lands have been classified under the Act of June 14, 1926, as amended (68 Stat. 173), as valuable for recreation and public purposes.

In the decision appealed from, it was also stated that because of the unique site characteristics of the selected lands and their very high recreational potential, the difference in the appraised value of the selected and offered lands could not be equalized by additional offered lands.

Appellant contends, in substance, that there are many places within 15 miles in either direction of the selected lands which afford access to the Trinity River with good camping and fishing sites. The appellant also contends that it should have been afforded the opportunity to adjust the offered lands to meet any increase in the appraised value of the selected lands and the value of the selected lands is not so unique that the State could not have equalized the values; and, further, the State is willing to offer additional lands. The appellant also requests a hearing on the legal and factual matters involved.

According to the record, the selected lands are located along the Trinity River and an important highway. It provides access to the river for fishermen, campers, picnickers and those just stopping to rest. Use of the area is intense because this is the only public campground along the Trinity River for a distance of 15 miles in either direction.

Various sportsmens groups, Federal and State agencies, as well as individuals, have submitted factual information regarding the very high recreational values which attach to the selected lands. They also request that the lands be retained in Federal ownership for use of the public and preservation of these values.

The decision appealed from was correct in the holding that there is a great disparity between the values of the selected and offered lands because of the unique values of the selected lands for recreational

use by the general public. Moreover, lands classified as valuable for recreational purposes under the Act of June 14, 1926, as amended, supra, are subject to disposal only to a qualified applicant for recreational purposes.

It is also noted that the offered lands included a fractional subdivision, (part of the NE¼NE¼ Sec. 16, T. 3 S., R. 7 E.). Under the regulations nothing less than a legal subdivision may be surrendered or selected (43 CFR 147.4(a)). The application was not properly made and became subject to rejection when filed. Correction of this defect would afford the State no priority in view of the fact that the selected lands have now been classified under the above-noted act.

With respect to the appellant's request for a hearing in the matter, the appellant is not entitled as a matter of right to a hearing where the issue is the proper classification of land; moreover, the compiled record is deemed to contain sufficient information upon which to base an informed decision. Cf. Ferris F. Booth, 66 I.D. 395 (1959). The appellant's request for a hearing is, therefore, denied.

Accordingly, the decision appealed from is hereby affirmed, as modified.

The appellant is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

Richard J. McCormick

Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION:

Division of State Lands (Certified Mail)
California Department of Fish & Game (Regular Mail)
Hon. Harold T. Johnson, House of Representatives (Regular Mail)
Wildlife Conservation Board, State of California (Regular Mail)
Marion Keesling, (Regular Mail)
John F. Reginato (Regular Mail)
Paul B. Ware (Regular Mail)
Julius Von Moritz (Regular Mail)
Division of Lands & Recreation
5D (California)
10 (Sacramento)
Case File
Perm. File
Attorney's Reading File; Appeals Reading File; CLH

In reply refer to:
6.05c
Sacramento 056295

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 21, 1962

DOCKET FILES

DECISION

State of California : State Exchange Application

Decision Vacated
Case Remanded

The State of California has appealed from a decision dated June 16, 1961, which rejected its application for an exchange of lands because the value of the selected lands exceeded the value of the offered lands by approximately $6,500. The Manager also noted that a portion of the selected lands (NW¼NE¼ Sec. 8) was occupied and has been improved under the guise of an invalid mining claim on the date of the filing of the State's application; that the claim was invalidated, subsequent to that date; and, that the lands are now occupied in trespass.

The appellant does not question the appraisal of the lands but contends, in substance, that it should be given the opportunity of amending its application to offer additional lands in order to equalize the values. The appellant also requests a hearing to present evidence on the facts concerned in the appeal.

Under section 8(c) of the Taylor Grazing Act, as amended, the Secretary of the Interior is required to allow the State exchange application if it meets the requirements of the statute, unless rights have been initiated for the same lands under applications filed prior to the State application. Solicitors Opinion, 61 I.D. 270, 277 (1954).

In view of the above, the Manager should have allowed the State the opportunity of adjusting its application to equalize the values of the selected and offered lands.

Accordingly, the decision appealed from is vacated and the case remanded to the Land Office Manager, Sacramento, through the office of the State Director for California for further processing consistent with appropriate regulations.

Under the circumstances it is unnecessary to comment on appellants request for a hearing in the matter.

Richard J. McCormick

Chief, Branch of Land Appeals
Division of Appeals

DEPT. OF INTERIOR
SACRAMENTO, CAL.

MAR 27 10 00 AM 1962

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LAND OFFICE

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In reply refer to:
Sacramento 074031
6.05c

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 18, 1963

Certified Mail
Return Receipt Requested

DECISION

Lundy Land Co. : Private Exchange Application

Decision Affirmed

Lundy Land Co. has appealed from a decision dated January 9, 1963, rejecting its private exchange application because the selected lands are withdrawn pursuant to the Act of March 4, 1931 (46 Stat. 1530), from settlement, location, filing, entry, or disposal under the public land laws of the United States for the purpose of protecting the watersheds supplying water to the city of Los Angeles and other cities and towns in the State of California.

The record verifies the status of the selected lands as reported in the decision from which appeal is taken. As shown by the record, the selected lands are still in a withdrawn status pursuant to the aforesaid act, and have not been restored to entry or disposition under the public land laws.

The appellant acknowledges the withdrawn character of the land but urges that its exchange application be allowed as furthering the use set forth in the withdrawal.

The aforesaid withdrawal having removed the selected lands from entry or disposal under the public land laws, the lands are not available for exchange and the appellant's exchange application was properly rejected. Cf. Vance Hudson et al., A-28571 (March 10, 1961). See also E. F. Berry et al., Los Angeles 0153232, etc. (October 22, 1959). The nature or character of the offered and selected lands proposed for exchange is not at issue in this appeal. The proposed exchange cannot be consummated as a matter of law because the selected lands are withdrawn from entry or disposal. Cf. Amy B. Croft, A-28855 (June 26, 1962).

The decision appealed from is affirmed.

Lundy Land Co. is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington 25, D. C., and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If

an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Richard J. McCormick

Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION

Lundy Land Co. (Certified Mail)
SD (California)
LO (Sacramento)
Case File
Division of Lands and Recreation
Appeals Reading File
Permanent Reading File
Attorneys' Reading File
mag
DDRF 1 & 2

DOCKET FILES

T. OF INTERIOR
RAMENTO, CAL.

SEP 23 10 00 AM 1963

BUREAU OF
LAND MANAGEMENT
LAND OFFICE

In reply refer to:
6.05c
Los Angeles 0166217

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

September 16, 1963

Certified Mail
Return Receipt Requested

DECISION

Dalbert L. Alexander : Private Exchange Application

Decision Affirmed

Dalbert L. Alexander has appealed from a decision of the Riverside Land Office, dated April 26, 1963, rejecting his private exchange application for the reason that the appraised value of the 20 acres of offered land is $1,000 and the appraised value of the 74.47 acres of selected land is $4,380.

The appellant alleges that:

1. The offered land was previously appraised by the Government at $1,500 and the land is worth more than $2,000.

2. The appraiser used cultivated farm land as the basis for his values but the selected lands have never been used for crops and not more than 15 acres are suitable for cultivation.

3. Lands purchased by him for $30 and $50 per acre are more valuable than the selected land.

It is true that the offered land was appraised at $1,500 in 1962. However, the appellant failed to mention that in the same appraisal the selected land was appraised at $7,400. Thus, it seems proper to conclude that the 1962 appraisal was erroneous.

The appellant has submitted no evidence to support his second allegation. Therefore, it is assumed that this allegation is not founded upon fact.

The third allegation is merely a personal opinion that is no more than a self-serving statement.

The Bureau's appraiser made a separate determination of value of the selected lands on the west and the east portions of the canal. The appraisal was based upon nine sales of land which were at least in some degree comparable to the subject land. Four of the nine sales were used to reflect the value of the west portion and one was used to reflect the value of the east portion. After considering all material factors that

affect the value of the land, it was determined that the values of the selected lands are as follows:

42.47 acres east of the canal at $50	=	$2,125
15.00 acres west of the canal at $150	=	2,250
17.00 acres in the canal, drain and road at	=	
Total		$4,380 (Rounded)

Even if the offered lands were valued at $2,000 as suggested by the appellant, the value of the selected lands would still exceed that of the offered lands by $2,380.

In determining the appraised value of the offered land, 12 sales from 1957 to 1962 were considered and of these seven were chosen as best representing the current market value. After considering all the factors that affect land values, it was concluded that there has been no appreciation of land values in this area and that the offered land is worth $50 per acre, or a total of $3,380 less than the selected land.

In view of the foregoing, the decision is affirmed.

Dalbert L. Alexander is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240. The filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Richard J. McCormick

Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION
Dalbert L. Alexander (Certified Mail)
Division of Appraisals
Division of Lands and Recreation
Appeals List No. 1
MHS

DOCKET FILES

DEPT OF INTERIOR
SACRAMENTO, CAL.

OCT 28 10 00 AM 1963

BUREAU OF
LAND MANAGEMENT
LAND OFFICE

In reply refer to:
6.05c
Riverside 02409

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

October 23, 1963

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Clarence E. Hager :
Bell B. Hager :
: Private Exchange Application
:

Decision Affirmed

Clarence E. and Bell B. Hager have appealed from a Riverside Land Office decision, dated July 26, 1963, rejecting their application for the exchange of 10 acres of offered land for 5 acres of selected land for the following reasons:

1. The selected land is worth $500 more than the offered land. 1/

2. It is not in the public interest to incur the expense of preparing a plat of survey for a relatively low value parcel of land.

3. The subject selected land lies within a three-section designated Resource Management area, which Riverside County has requested be held for recreation and public purposes as a desert park (Desert Garden Area).

4. The law authorizes private exchanges only where the selected public land does not exceed the value of the offered land and the exchange is otherwise in the public interest.

The decision also states that in view of the relatively low value of the offered land, selection should be made from the existing small tracts currently being offered for sale.

The appellants dispute the appraised value of the selected land because the county was offered the same land for $2.50 per acre instead of the $200 per acre asked from the applicants. The appellant also claims that Riverside County has "relinquished" 400 acres from its original application for lands for recreational purposes for the Desert Garden Area, therefore, the selected land is not needed for this purpose.

The $2.50 price per acre to the county is based upon the requirement that the county will develop the land for certain public uses. There is no relationship whatever between the price of land offered to the county for public use and the appraised market value of the land that individuals are required to pay. Furthermore, there is nothing of record showing that Riverside County has relinquished its interest in the subject selected land.

1/ The decision appealed from states that the offered land is valued at $1,000 less than the selected land. However, the record shows the offered land to be valued at $500, and the selected land at $1,000.

The decision indicates that the offered land which is located within the Joshua Tree National Monument, is desired by the Government, provided, that the exchange can be consummated without financial loss to the Government. The decision also indicates that the applicants have a choice of hundreds of tracts of public land that have already been appraised and classified for disposal. Thus, the applicants have a reasonable choice of selections, provided only that they do not select land that has been appraised as more valuable than the offered land.

Accordingly, the decision is affirmed.

The decision is without prejudice, however, to the applicants' right to select other public land that is of approximately the same value as the offered land.

Clarence E. and Bell B. Hager are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington D.C. 20240, and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Richard J. McCormick

Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION:
Clarence E. & Bell B. Hager (Certified Mail)
Division of Lands and Recreation
Appeals List No. 1
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DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1964 JUL 20 AM 10 00

In reply refer to:
704
Los Angeles 0134989

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

July 10, 1964

DECISION

State of California : State Exchange Application

Hearing Ordered

By Departmental decision Mansell O. LaFox et al., State of California, A-29030 of May 14, 1964, it was held that where, after an application for a state exchange is filed, it appears that certain of the selected lands are covered by ostensibly valid mining claims, the State, if it denies the validity of the claims, is to be allowed a hearing on the issue of whether or not the claims are valid.

The State of California contends that the mining claims involved are invalid and that none of the selected land described in its application is mineral in character, and insists that a hearing be held on the issue.

Accordingly, the Chief Hearings Officer at Sacramento, California, is directed to schedule a hearing at which the State of California will have the burden of establishing a prima facie case that the mining claims in question are invalid. If it does so, the mineral claimants will then be required to submit evidence to overcome the State's case and establish the validity of their claims. The exact land and mining claims involved will be ascertained by the State Director for California, Bureau of Land Management, in view of the partial withdrawal of the subject application as to the selected lands by the State.

The hearing should be conducted in accordance with Hearing Procedure, Subpart 43 CFR 1852 et seq. Following the completion of said hearing, the appointed hearing examiner shall make a recommended decision which, together with the record shall be submitted to the Director for initial decision in accordance with 43 CFR 1852.3-8(c).

James F. Doyle
Chief, Office of Appeals
and Hearings

DISTRIBUTION:

State of California, State Lands Commission
Office of the Hearing Examiners, Sacramento, California
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DEPT. OF INTERIOR
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SACRAMENTO LAND OFFICE

1965 JAN 29 AM 10 09

In Reply Refer to:
722c
LA 0164687
R 05329

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D.C. 20240

January 13, 1965

DECISION

Henry S. Wheeler	:	Porterfield and Wyandotte Application
David S. and Alma S. Adams	:	Point Reyes Exchange Application

Scrip Application Rejected

On July 14, 1959, Henry S. Wheeler filed Porterfield and Wyandotte scrip application LA 0164687 covering certain lands situated in section 7, T. 9 N., R. 1 W., SBM., and section 12, T. 9 N., R. 2 W., SBM., California. The application was amended several times and as now filed covers $W\frac{1}{2}NE\frac{1}{4}NE\frac{1}{4}NE\frac{1}{4}$ and $SE\frac{1}{4}NE\frac{1}{4}NE\frac{1}{4}$ section 7, T. 9 N., R. 1 W., and $S\frac{1}{2}NE\frac{1}{4}NE\frac{1}{4}NE\frac{1}{4}$, $E\frac{1}{2}NW\frac{1}{4}NE\frac{1}{4}$, $W\frac{1}{2}NE\frac{1}{4}NE\frac{1}{4}$ and $SE\frac{1}{4}NE\frac{1}{4}NE\frac{1}{4}$ section 12, T. 9 N., R. 2 W., SBM.

On June 22, 1964, David S. Adams and Alma S. Adams filed application R 05329 under the Act of September 13, 1962 (76 Stat. 538; 16 U.S.C. 459c) to exchange 300 acres more or less, of privately owned lands situated in Marin County and within the Point Reyes National Seashore, for $W\frac{1}{2}NE\frac{1}{4}NE\frac{1}{4}NE\frac{1}{4}$, $SE\frac{1}{4}NE\frac{1}{4}NE\frac{1}{4}$, $W\frac{1}{2}NE\frac{1}{4}NE\frac{1}{4}$ and $E\frac{1}{2}NW\frac{1}{4}NE\frac{1}{4}$ section 7, T. 9 N., R. 1 W., and $S\frac{1}{2}NE\frac{1}{4}NE\frac{1}{4}NE\frac{1}{4}$, $SE\frac{1}{4}NE\frac{1}{4}NE\frac{1}{4}$, $W\frac{1}{2}NE\frac{1}{4}NE\frac{1}{4}$ and $E\frac{1}{2}NW\frac{1}{4}NE\frac{1}{4}$ section 12, T. 9 N., R. 2 W., SBM., California, aggregating 110 acres.

Examination of the above described lands indicates that they are not mineral in character and that they are not needed for retention in Federal ownership. The examination further indicates that the highest and best use for the selected lands is for urban growth in the City of Barstow; the highest and best use of the offered lands is inclusion in the Point Reyes National Seashore.

The subject lands are proper for private exchange for the following reasons:

1. The National Park Service is actively engaged in a land acquisition program within the Point Reyes National Seashore to acquire private inholding and preserve all of the lands within the seashore for present and future generations, in accordance with the directives in the Act of 1962, supra.

2. To acquire the 300 acres of offered lands would add measurably to the National Park Service's objective mentioned above, and in addition will carry out Congressional policy to acquire as much of the Point Reyes lands as possible by exchange.

3. An exchange will satisfy two purposes: 1. Acquisition of lands for the Point Reyes National Seashore (a Federal program), and 2. Introduce needed acreage into private ownership for eventual urban expansion of the City of Barstow.

January 13, 1965

4. Since the above described lands are not needed for retention in Federal ownership, the public interest woudl better be served by implementing a Federal program while disposing of them.

In view of the above, the scrip application LA 0164687 is hereby rejected.

L. P. Hoffman

Assistant Director

Approved: Jan. 18, 1965

Under Secretary of the Interior

DISTRIBUTION:
David S. Adams
Alma S. Adams
Henry S. Wheeler
Div. of L&M S&T (4)
Div. of L&M PM (2)
Appeals List No. 1
Appeals 5
LLM

appeal to Sec.
A-31231

Private Exchanges: Protests 2244.1-4

Where a proposed private exchange meets the statutory requirement of equal value between the offered and the selected land and it appears that the exchange will be in the public interest, a protest against the exchange is properly dismissed.

S. V. Wantrup, Wallace Hardin, Sacramento S-941 (October 13, 1969)

1969 OCT 31 AM 10 00
DEPT OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

In reply refer to:
141
Sacramento S-941
October 13, 1969

CERTIFIED MAIL
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DECISION

S. V. Wantrup Protestant	:	Private Exchange
Wallace Hardin Exchange Applicant	:	

Decision Affirmed

S. V. Wantrup has appealed from a decision of the Sacramento Land Office, dated July 15, 1969, dismissing his protest to the private exchange of a 120-acre block of privately owned lands for 4 parcels of certain selected public lands containing 128.53 acres, pursuant to section 8(b) of the Taylor Grazing Act of June 28, 1934, as amended, 43 U.S.C. § 315g(b). This exchange was found to be in the public interest. The decision appealed from held that a portion of Lot 1 of Section 2, T. 8 N., R. 5 W., which the protestant has enclosed in his fence is public land, and it has not been conveyed to him by his predecessor in interest. The decision denied the protestant's request to split the lot and offer the portion enclosed in his fence at public sale. The decision also rejected the protestant's allegation that the offered tract is inferior in value to the selected parcels of land.

The protestant alleges as follows on appeal:

1. The current dispute concerns mainly a piece of land over which I claim and effectively exercise ownership rights- as my predecessors did for nearly 70 years since the beginning of the claim of title in 1901. * * *

2. * * * It was only when Thomas E. Young et ux conveyed the parcel to Edward J. Estreito on May 25, 1956, that the exclusion clause quoted by the Bureau was inserted in the deed. This clause, however, did not change actual boundaries and effective ownership.

3. He purchased his ranch in June 1966 and the parcel did not become a matter of dispute until he learned about the exchange on January 18, 1969.

4. The Bureau used improper procedures in determining the appraised values of the offered and the selected lands.

The case file contains a photo copy of a deed from Mary B. Rubo to S. V. Wantrup, dated May 27, 1966. This deed describes three separate tracts of land. Parcel one in the deed is the only one relevant to this case. The

second paragraph of the deed pertaining to Parcel one contains the following language:

> Containing 394.27 acres of land, more or less, and being a portion of the Locallomi Rancho and Sectional lands adjoining on the southwest thereof, excepting therefrom, however, the portion thereof lying south of the south line of Township 9 North, Range 5 West, and also excepting therefrom any portion thereof lying within the boundaries of Lot 2 in Section 35 in said Township 9 North, Range 5 West, Mount Diablo Base and Meridian.

Thus, since Lot 1 of Section 2 lies in township 8 N. and this lot lies south of the south line of township 9 N., it is incomprehensible how the protestant can persist in good faith that the disputed land was included in that purchased by him from Mary Rubo. Furthermore, since the protestant openly admits that the exclusion clause had already appeared in the 1956 deed from Young to Estreito, the contention that the exception did not change the boundaries of the prior chain of title cannot be understood. The protestant has never had reason to believe that he had acquired legal title to the disputed land. Therefore, his assertion of a color of title to the land is devoid of merit.

The Bureau appraisal shows that the 120 acres of offered land is valued at $145 per acre or a total of $17,400, while the 128.53 acres of the selected lands are valued at $135 per acre or a total of $17,280. One of the prime factors making the value of the offered land higher than the selected lands is the presence of a year-round stream with water quality sufficiently high to sustain fish, whereas, the selected lands have no available water supply. The protestant has submitted no probative evidence showing that the value of the selected lands exceeds the value of the offered lands.

The Department has consistently held that a protest against a private exchange application is properly dismissed when the record shows that the proposed exchange complies with the statutory requirements that the value of the selected land not exceed the value of the offered land and that the exchange benefit the public interest, and where the allegations of the protestant do not provide a basis for sustaining the protest. Utah-Idaho Gragiers Association, Peter McKellar, A-28100 (December 22, 1959); Charles Redd DBA Charles Redd Sheep Co., A-30219 (April 15, 1966); A. R. Spikes, A-27123 (June 29, 1955).

The classification report shows that:

1. The selected lands are surrounded by the applicant's ranch and are, therefore, isolated from other Bureau holdings.

2. The exchange would relieve the Bureau of the Administrative problems connected with these isolated tracts.

3. Acquisition of the offered land will provide the public a water source on the west side of Cedar Roughs.

4. The offered tract will fill a "slot" in the Bureau's ownership pattern of land in this area.

Therefore, the decision to make the exchange is supported by the record and the protest was properly dismissed.

S. V. Wantrup has the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240 and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. The appellant must show wherein the decision appealed from is in error.

In the event of an appeal the adverse party to be served is:

Harold J. Thorsen
Attorney for
Wallace Hardin
1314 Main Street
St. Helena, California 94574

Edward W. Stuebing
Chief, Branch of Land Appeals
Office of Appeals and Hearings

Enclosures 2

DISTRIBUTION:
S. V. Wantrup (Certified Mail)
Harold J. Thorsen, Attorney at Law
Wallace Hardin
Hon. Don H. Clausen, House of Representatives
300 (6)
200
Appeals List No. 1

appeal to Sec. A-31249 only 3 copies needed

Private Exchanges: Generally 2244.1-4

Until a patent is issued to the selected lands in a proposed private exchange, the authorized officer may at any time determine that the exchange should not be completed, and no action taken in regard to the exchange shall establish any contractual or other rights against the United States, or create any contractual or other obligation of the United States.

Private Exchanges: Point Reyes National Seashore Exchanges 2244.4-4

Where an applicant for an exchange of lands under the Point Reyes National Seashore Act refuses to remit the necessary amount of money to equalize the values of the offered and selected lands as required by the applicable law and regulations, where the values of the offered and selected land have been changed considerably since the application was filed, and where the offered and selected lands are located in areas of such fluctuating prices and speculative activity that the values set by appraisal do not necessarily reflect the fair market value of such lands as of the date when the exchange might be completed, the proposed exchange will be rejected.

Jack H. Stockstill and Vernon C. Mager et al., Sacramento 078951 (December 15, 1969)

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DEC 22 7 AM 10 69

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

In reply refer to:
141
Sacramento 078951

December 15, 1969

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DECISION

Jack H. Stockstill, et ux.
Vernon C. Mager, et ux.
Applicants

City of Sonoma
County of Sonoma
Mrs. Inez P. Ettelson, and
Harold and Fred Fletcher,
Protestants

Point Reyes National Seashore Exchange

Land Office Decision Vacated; Proposed Exchange Application Rejected; Protests Dismissed

Jack H. Stockstill and Vernon C. Mager and their wives filed an exchange application on October 8, 1964, under the Point Reyes National Seashore Act of September 13, 1962, 76 Stat. 538, 16 U.S.C. 459c (1964). On August 4, 1966, the applicants appealed from a letter decision of the Sacramento Land Office, dated July 7, 1966, which allowed them 30 days from date of receipt within which to remit the amount of $1,800 to equalize the values of the offered and selected lands involved in their above-identified proposed exchange.

In June 1964 the applicants proposed to exchange a privately sub-divided lot (Lot 58), owned by them on Point Reyes, for 160 acres of public domain land in nearby Sonoma County. Ten days after the exchange was proposed the selected land was classified as suitable for that purpose.

In a letter dated September 23, 1964, Mr. Thomas Kornelis, Realty Officer, Point Reyes National Seashore, National Park Service, advised Stockstill and Mager that the exchange appeared feasible and that the United States would pay them $1,520 to equalize the values. In February 1965 this equalization amount was increased to $2,020. In March 1965 a land office decision approved the exchange and payment of $2,020 to the applicants, authorized publication of the required notices, and called upon the applicants to tender their deed and title information. The notice was duly published, the deed executed by Stockstill and Mager and their respective wives, and a title report was obtained.

In August 1965 a new appraisal was ordered to determine the effect of an interim decision to impose a mineral reservation on the selected lands. As the result of this appraisal the applicants were informed that rather than receiving $2,020 from the United States they would have to pay the United States $2,300 to equalize the values because of an increase in the value of the selected land.

On August 27 and September 23, 1965, the City of Sonoma objected to the exchange on the grounds that the selected land might have value for public purposes. On March 10, 1966, the County of Sonoma, in cooperation with the City, filed a recreation and public purposes petition-application, embracing the selected land, which could not be accepted in view of the existing Point Reyes exchange classification. However, the County's filing is considered as a protest to the proposed exchange. On August 27, 1965, a protest was received from Mrs. Inez P. Ettelson and Harold and Fred Fletcher, her sons. As owners of land adjacent to the selected land, they have stated that they will not give the appellants a right-of-way to the selected land and that the selected land should remain in public ownership rather than be subjected to private speculation.

By letter dated March 23, 1966, the National Park Service indicated that the value of the offered land had increased to $7,000, reducing the disparity in value from $2,300 to $1,800.

On July 7, 1966, the Land Office sent a letter form decision to Messrs. Stockstill and Mager advising them of the disparity in values and calling upon them to remit $1,800 within thirty days of receipt of the letter or the case would "be closed without further notice." That action is the subject of this appeal.

The appellants allege that the Government has a mandatory duty to issue a patent to the selected lands, and to transmit the sum of $2,020 to them, as both parties to the transaction in the proposed exchange have fully complied with all of the requirements of the law and regulations in this matter.

On May 1, 1968, the Associate Solicitor, Public Lands, stated that a new appraisal was needed for both the offered and selected lands. The case was returned to California for the new appraisal, which, when completed in May 1969, established the value of the offered land at $9,000 and the value of the selected land at $24,500, on which basis the applicants would be required to pay $15,500 to the United States to equalize the values.

The Point Reyes National Seashore Act provides, in pertinent part:

> In exercising his authority to acquire property by exchange, the Secretary may accept title to any

non-Federal property located within such area and convey to the grantor of such property any federally owned property under the jurisdiction of the Secretary within California and adjacent States, notwithstanding any other provision of law. The properties so exchanged shall be approximately equal in fair market value, except that the Secretary may accept cash from or pay cash to the grantor in such an exchange in order to equalize the values of the properties exchanged. P.L. 87-657, Sec. 3, Act of Sept. 13, 1962, 76 Stat. 539, 16 U.S.C. 459c-2(c). (Emphasis supplied).

The pertinent portion of the regulation, 43 CFR 2244.4-4(b), is similar to that part of the statute underscored above.

Unless a statute or regulation provides otherwise, the general rule is that until a patent issues the Department may at any time determine that the sale or exchange should not be consummated. Willcoxson v. U. S., 313 F. 2d 884 (D.C. Cir. 1963). Regarding exchanges, the Department has made its legal position quite clear. "Prior to issuance of patent, no action taken shall establish any contractual or other rights against the United States, or create any contractual or other obligation of the United States." 43 CFR 2244.1-4(b)(3).

Accordingly, and in line with its express policy to receive a fair return for its property, 43 CFR 1725.2-1, the Department has consistently adhered to the position in cases involving sales and exchanges that the question of current fair market value of lands remains open to reexamination, as do other factors affecting the public interest, until patent issues. See, e.g., Robert C. and Mary V. Ellis, A-29185 (September 9, 1964).

Regulation 43 CFR 2244.1-4(b)(2) provides that "changes in values, after publication of the notice . . ., will ordinarily not be a basis for rejection of an application, all other factors being equal." It may be argued that this regulation is intended to fix the values as of the time of publication. However, such construction is neither required by the language of the regulation nor consistent with the statute, regulations or precedents cited above. Construed consistently with the statute and regulations, this section simply means that changes in market value, although they must be recognized, will not ordinarily require rejection of an application.

In order to equalize the values presently established for the offered and selected lands, appellants would now be required to remit to the United States $15,500. It is reasonable to assume that they will refuse to do so in view of their unwillingness heretofore to remit $1,800 to equalize values. Moreover, in light of the vast disparity in values reflected by

the May 1969 appraisal, we question whether consummation of the proposed exchange would be in accord with the statutory and regulatory requirement that the properties to be exchanged shall be approximately equal in value. While the statute and regulation provide that cash may be used to equalize values, we doubt whether Congress thus intended to entirely dispense with the requirement that there be some similarity in the values of the lands to be exchanged. Finally, it is obvious that both the offered and selected lands are located in areas of such fluctuating prices and speculative activity that the values set by appraisal do not necessarily reflect the fair market value of such land as of the date when the exchange might be completed.

Accordingly, we believe that the best interests of the public would be served by vacating the proposed exchange. In this way the present classification of the selected lands may be reexamined in order that it may be determined exactly what their proper disposition should be.

Although we regret that at this late date the proposed exchange must be disapproved, it should be noted that the applicants are not suffering undue hardship in this case. The appraised value of their property has increased by approximately 50% since the first appraisal.

The decision of the land office is vacated. The protests of the City and County of Sonoma, Mrs. Ettelson and Harold and Fred Fletcher thus become moot and are dismissed. When this decision is final the land office will initiate appropriate action to vitiate the effect of the conveyance of the offered land by the appellants to the United States.

Jack H. Stockstill and Vernon C. Mager have the right to appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken, it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240. The filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. The appellants must show wherein the decision appealed from is in error.

If an appeal is taken, the adverse parties to be served are:

Mrs. Inez P. Ettelson
Harold and Fred Fletcher
c/o Grinstead and Parmalee
Attorneys at Law
466 First Street East
Sonoma, California 95476

Mr. Talbert W. Bean, Mayor
City of Sonoma
Sonoma, California

Board of County Supervisors
County of Sonoma
Sonoma, California

Chief, Office of Appeals
and Hearings

Enclosures 2

DISTRIBUTION:
Mr. Robert D. Barbagelata, Attorney for Appellants (Certified Mail)
Mr. Robert Parmalee, Attorney for Protestants, Inez P. Ettelson et al.
City of Sonoma
Board of County Supervisors, Sonoma County
Messrs. Jack H. Stockstill and Vernon C. Mager
Mr. Thomas Kornelis, Chief of Land and Water Rights, San Francisco
Planning and Service Center, National Park Service
Hon. Don H. Clausen, House of Representatives
Hon. Jerry L. Pettis, House of Representatives
300 (4)
200
Appeals List No. 1